

1970

c 97 Creditors Relief Act

Ontario

© Queen's Printer for Ontario, 1970

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/rso>

Bibliographic Citation

Creditors Relief Act, RSO 1970, c 97

Repository Citation

Ontario (1970) "c 97 Creditors Relief Act," *Ontario: Revised Statutes*: Vol. 1970: Iss. 1, Article 100.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1970/iss1/100>

This Statutes is brought to you for free and open access by the Statutes at Osgoode Digital Commons. It has been accepted for inclusion in Ontario: Revised Statutes by an authorized administrator of Osgoode Digital Commons.

CHAPTER 97

The Creditors' Relief Act

1. In this Act,Interpre-
tation

- (a) "county" includes a provisional judicial district;
- (b) "county court" includes a district court;
- (c) "execution" includes a writ of *fieri facias* and every subsequent writ for giving effect thereto;
- (d) "judge" means a judge of the county court of the county the sheriff of which is required to take the proceedings directed by this Act;
- (e) "sheriff" includes any officer to whom an execution is directed. R.S.O. 1960, c. 78, s. 1.

2. Where a judge is disqualified to act in a matter arising under this Act, a judge of the county court of an adjoining county has jurisdiction to act in his place. R.S.O. 1960, c. 78, s. 2.

Where
judge is
disqualified

3. Subject to this Act, there is no priority among creditors by execution from the Supreme Court or from a county court. R.S.O. 1960, c. 78, s. 3.

No priority
among
execution
creditors

4.—(1) A creditor who attaches a debt shall be deemed to do so for the benefit of all creditors of his debtor as well as for himself.

Attachment
to be for
benefit of
all creditors

(2) Payment of such debt shall be made to the sheriff of the county in which the garnishee resides, or, if there are more garnishees than one in respect of the same debt, then to the sheriff of the county in which any one of them resides.

To whom
to be paid

(3) This section does not apply to debts attached by proceedings in a small claims court unless before the amount recovered by the garnishment proceedings is actually received by the creditor an execution against the property of the debtor is placed in the hands of the sheriff of such county.

Attachments
in small claims
courts

(4) Where money is paid to a sheriff in whose hands there is no execution against the property of the debtor and there is in the hands of the sheriff of another county an execution against the property of the debtor, the court or a judge on the application of the last-mentioned sheriff or of a creditor or of the debtor may direct, on such terms as to costs and otherwise as seem just, that

Money
paid to
sheriff who
has no
execution
in hand

such money be paid over to the last-mentioned sheriff to be distributed by him as if such money had then been paid to him by the garnishee, and the court or judge shall fix the compensation to be paid to the sheriff by whom the money was received from the garnishee for his services.

Money paid
into
small claims
court

(5) Where money that a sheriff is entitled to receive under this section is paid into a small claims court, the sheriff is entitled to demand and receive it from the clerk of the court for the purpose of distributing it under this Act.

Right of
attaching
creditor to
share with
other
creditors

(6) An attaching creditor is entitled to share in respect of his claim against the debtor in any distribution made under this Act, but his share shall not exceed the amount recovered by his garnishment proceedings unless he has in due time placed an execution or a certificate given under this Act in the sheriff's hands.

Sheriff's
poundage

(7) The sheriff is entitled to poundage upon money received and distributed by him under this section at the rate of $1\frac{1}{4}$ per cent and no more.

Sheriff's
right to
recover
attached
debt

(8) If an attached debt that the sheriff is entitled to receive or any part of it is received by the attaching creditor, the sheriff may recover it from him; but a clerk of a small claims court is not liable for making payment to the creditor unless at the time of payment he has notice that there is an execution against the property of the debtor in the sheriff's hands. R.S.O. 1960, c. 78, s. 4, *amended*.

Entries by
sheriff after
levy

R.S.O. 1970,
c. 2

5.—(1) Where a sheriff levies money under an execution against the property of a debtor or receives money in respect of a debt that has been attached or sold under section 15 of *The Absconding Debtors Act*, he shall forthwith make an entry in Form 1 in a book to be kept in his office, and such book shall be open to the public for inspection without charge.

Distribution

(2) The money shall thereafter be distributed rateably among all execution creditors and other creditors whose executions or certificates given under this Act were in the sheriff's hands at the time of the levy or receipt of the money or who deliver their executions or certificates to the sheriff within one month from the entry, subject to the provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditor under whose execution the amount was made, and subject also to subsection 6 of section 4, and, as respects money recovered by garnishment proceedings, subject to the payment thereof to the creditor who obtained the attaching order of his costs of such proceedings.

(3) Subsection 2 does not apply to money received by a sheriff as the proceeds of a sale of property by him under an interpleader order; but upon the determination of the interpleader proceeding in favour of the creditors the money, whether in the sheriff's hands or in court pending such determination, shall, subject to subsection 4, be distributed by the sheriff among the creditors contesting the adverse claim.

Money realized on sale under interpleader order

(4) Where proceedings are taken by a sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute *pro rata* in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim are entitled to share in any benefit that may be derived from the contestation of such claim so far as is necessary to satisfy their executions or certificates.

Rights of creditors in case of interpleader proceedings

(5) The judge making the interpleader order may direct that one creditor has the carriage of the interpleader proceedings on behalf of all creditors interested, and the costs thereof, as between solicitor and client, are a first charge upon the money or goods that may be found by the proceedings to be applicable upon the executions or certificates.

Order as to carriage of proceedings

(6) Upon an interpleader application the judge may allow to other creditors who desire to take part in the contest a reasonable time in which to place their executions or certificates in the sheriff's hands upon such terms as to costs and otherwise as are considered just.

Time allowed

(7) Where the sheriff, subsequent to the entry but within the month, levies a further amount from the property of a debtor or receives money in respect of a debt that has been attached or sold, it shall be dealt with as if it had been levied or received before the entry.

Application of subsequent levy

(8) If, after the month, a further amount is so levied or received, a new notice shall be entered and the distribution to be made of the amount so levied or received and of any further amount levied or received within a month of the entry of the last-mentioned entry shall be governed by the entry thereof in accordance with the foregoing provisions of this section, and so from time to time as further amounts are so levied or received.

Notice and distribution on further levy

(9) Where a creditor has shared in a previous distribution, he is entitled to share in a subsequent one only in respect of the amount remaining due to him after crediting what he has received in a previous distribution.

Share in subsequent distribution

(10) In distributing money under this section creditors who have executions against goods or lands only or against goods and

Equality of all executions

lands are entitled to share rateably with all others and money realized under execution against either goods or lands or against both, or under an attaching order.

Which
creditors
may share

(11) Subject to subsection 6 of section 4, a creditor is not entitled to share in the distribution unless by the delivery of an execution or otherwise under this Act he has established a claim against the debtor either alone or jointly with some other person.

Money
realized
under

R.S.O. 1970,
c. 2

(12) Where money in the hands of the sheriff for distribution is the proceeds of the property of an absconding debtor against whom an order of attachment has been issued under *The Absconding Debtors Act*, the period mentioned in subsection 2 is two months, and subsection 8 shall be read as if the words "the month" in the first line were "the two months". R.S.O. 1960, c. 78, s. 5.

Proceedings
where debtor
allows
execution
to remain
unsatisfied

6.—(1) If a debtor permits an execution issued against him under which any of his goods or chattels are seized by a sheriff to remain unsatisfied in the sheriff's hands until within two days of the time fixed by the sheriff for the sale thereof, or for twenty days after the seizure, or allows an execution against his lands to remain unsatisfied for nine months after it has been placed in the sheriff's hands, the proceedings hereinafter authorized may be taken by other creditors or claimants in respect of debts that are overdue.

When sale
occurs

(2) When a sale has taken place under an execution, the proceedings hereinafter authorized may be taken by any creditor of the execution debtor even though his claim is not then due. R.S.O. 1960, c. 78, s. 6.

Affidavit of
creditor

7.—(1) An affidavit in Form 2 of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts.

Filing
affidavit or
certificate

(2) Before or simultaneously with the filing with the clerk of the county court of the affidavit, there shall be filed with him a certificate of the sheriff, or an affidavit, showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act.

Service on
debtor

(3) The claimant shall serve on the debtor one of the duplicates and a notice in Form 3.

Service out
of Ontario

(4) Where the affidavit and notice are to be served out of Ontario, the judge shall by order fix the time after which the next step may be taken by the claimant as hereinafter provided. R.S.O. 1960, c. 78, s. 7.

8.—(1) An execution debtor may give notice in writing to the sheriff that any claims to be served upon him may be served upon a solicitor in Ontario, whose name and address shall be given, or by mailing the claims to an address stated in the notice.

Notice by
debtor of
address for
service

(2) The sheriff shall thereupon enter the notice in the book mentioned in subsection 1 of section 5, and, so long as any execution that was in the sheriff's hands at the time the notice was given remains in his hands, shall repeat such entry immediately below any entry in Form 1 made in respect of the execution, unless the notice is revoked in writing, in which case the entry thereof shall be marked "revoked".

Entry of
notice

(3) So long as the notice is not revoked, the affidavit of claim and notice in Form 3 may, where a solicitor is named, be served upon an execution debtor by serving it upon the solicitor, or, if mailing is required, then by sending it by registered mail to the address in the notice given by the execution debtor.

Service at
address

(4) Where the notice in Form 3 served on a debtor does not state some place in or within three miles of the county town of the county in which the proceedings are being taken at which service may be made upon the claimant, or does not give the name and address of some solicitor in Ontario who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by sending it by registered mail addressed to the claimant at the county town.

Service by
mail

(5) The claimant shall file with the clerk of the county court of the county, the sheriff of which has the execution, one of the duplicate affidavits of claim and a copy of the notice with an affidavit of service thereof in Form 4.

Filing
affidavit

(6) The affidavit and the notice shall, where practicable, be personally served upon the debtor; but, if it is made to appear to the judge that the claimant is unable to effect prompt personal service, the judge may order substitutional or other service, or may direct some act to be done that shall be deemed sufficient service. R.S.O. 1960, c. 78, s. 8.

Service
generally

9.—(1) Where the claim is not contested in the manner hereinafter mentioned, after ten days from the day of service, or after the time mentioned in the order provided for by subsection 4 of section 7, as the case may be, on the application of the claimant and his filing proof of due service of the affidavit and notice, or, where the claim is contested, upon the determination of a dispute in favour of the claimant, either in whole or in part, the clerk of the county court shall deliver to the creditor a certificate in Form 5 and, where the claim is disputed as to a part only, the claimant may elect, by a writing filed with the clerk, to abandon such part and is entitled to a certificate as to the residue.

Certificate
where claim
not disputed

Delivery to
sheriff and
effect of
certificate

(2) Upon delivery of the certificate to the sheriff the claimant shall be deemed to be an execution creditor within the meaning of this Act, and is entitled to share in any distribution as if he had delivered an execution to the sheriff, and the certificate binds the lands and goods of the debtor in the same manner as an execution, subject, however, to the debt being afterwards disputed by a creditor as hereinafter provided.

In case of
interpleader

(3) For the purpose of interpleader proceedings the certificate shall be deemed to be an execution.

Address for
service to be
endorsed

(4) If the certificate is obtained by a solicitor, his name and address shall be endorsed thereon, and, if obtained by the claimant in person, there shall be endorsed thereon a statement of some place in or within three miles of the county town of the county in which the proceedings are being taken at which service may be made upon him, and, in default thereof, service of any notice, paper or document may be made upon the claimant by sending it by registered mail addressed to him at the county town.

Further
levy

(5) On receiving the certificate the sheriff shall make a further seizure of the property of the debtor to the amount of the debt so claimed and the sheriff's fees, and so from time to time in case further certificates are received.

Time of
remaining
in force

(6) A certificate remains in force for three years from the date thereof, but may from time to time be renewed in the same manner as an execution.

Execution or
certificate
expiring
within
month
of levy

(7) Notwithstanding the expiry of an execution or certificate before the termination of the month during which a notice of money having been levied or received is required to be entered, the execution or certificate, as to any money levied or received during such month, shall be deemed to be in full force and effect. R.S.O. 1960, c. 78, s. 9.

Contesting
claim

10.—(1) The claim may be contested by the debtor or by a creditor of the debtor.

Affidavit of
debtor

(2) Where the debtor contests the claim, he shall file with the clerk an affidavit stating that he has a good defence to the claim or to a specified part of it on the merits, but the judge may dispense with the affidavit on terms or otherwise.

Filing and
serving
affidavit

(3) The debtor shall file the affidavit and serve upon the claimant a copy thereof within ten days after service upon him of the affidavit of claim and the notice, or within the time mentioned in the order provided for by subsection 4 of section 7, as the case may be, or within such further time as the judge may allow.

(4) Where the contestation is by a creditor, he shall file with the clerk an affidavit to the effect that he has reason to believe that the debt claimed is not really and in good faith due from the debtor to the claimant, but the judge may dispense with the affidavit on terms or otherwise.

Contestation
by creditor

(5) Notice of contestation, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served upon the claimant within five days after filing the affidavit or after the order of the judge, if the affidavit is dispensed with.

Notice of
contestation

(6) The affidavit by a creditor may be filed and a certificate thereof delivered to the sheriff at any time before distribution is made, and the sheriff shall forthwith give notice of the receipt of such certificate to the claimant.

Certificate of
contestation

(7) The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place in or within three miles of the county town of the county in which the proceedings are being taken at which service may be made upon him, or the address of a solicitor in Ontario who may be served on his behalf, and, in default thereof, service of any notice, paper or document may be made upon the debtor or contestant by sending it by registered mail addressed to him at the county town. R.S.O. 1960, c. 78, s. 10.

Address for
service

11. Where the address of a solicitor is given for service that is not within three miles of the county town where the proceedings are carried on, service may be made upon him by serving his agent in Toronto. R.S.O. 1960, c. 78, s. 11.

Service on
Toronto
agent

12.—(1) Where a claim is contested by a creditor after a certificate has been placed in the sheriff's hands, the sheriff, unless the judge otherwise orders, shall levy as if the contestation had not been made, and shall, until the determination of the contestation, retain in the bank the amount that would be apportionable to the claim if valid, and shall, as soon after the expiry of the month as is practicable, distribute the residue of the money made among those entitled thereto.

Distribution
in case of
contestation

(2) The claimant whose claim is contested may apply to the judge for an order allowing his claim and determining the amount, and, if he does not make such application within eight days after receiving notice of the contestation or within such further time, if any, as the judge allows, he shall be taken to have abandoned his claim.

Application
for allow-
ance of
claim

(3) Where the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith, any other creditor may apply for an order permitting him to intervene in the contestation. R.S.O. 1960, c. 78, s. 12.

When
contest is
not in good
faith

Trial of
contestation

13.—(1) The judge may determine any question in dispute in a summary manner or may direct an action to be brought or an issue to be tried with or without a jury in any court and in any county for the determination thereof, and may make such order as to the costs of the proceedings as he considers just.

Where
sum in
controversy
exceeds \$400

(2) Where the sum in controversy appears to be over \$400 exclusive of costs, the judge shall direct that the action be brought or the issue tried in the Supreme Court, and, subject to any order that that court or a judge thereof may make in that behalf, shall name the county in which the trial is to take place.

Proceedings
where issue
directed

(3) Where an issue is directed, the trial shall take place and all proceedings subsequent thereto shall be the same as if it had been an action in the court in which it is ordered to be tried. R.S.O. 1960, c. 78, s. 13.

Production,
examination,
etc.

14. The same proceedings may be had for the production of documents and for the examination of parties or others, either before or at the trial, as may be taken in an ordinary action, and such proceedings may also be taken before the application to the judge, and as a foundation therefor. R.S.O. 1960, c. 78, s. 14.

Clerk to
keep book
of record

15.—(1) The clerk of the county court shall keep a book in which, before giving a certificate or issuing an execution for a claim, he shall enter the following particulars with reference to every claim in respect of which he gives a certificate or issues an execution:

1. The names of the claimant and the debtor.
2. The date of the entry.
3. The amount of the debt, exclusive of costs.
4. The amount of costs.
5. If the proceedings have been set aside, that fact, and shortly the reason therefor.

Effect of
entry

(2) The entry has, subject to this Act, the effect of and is a final judgment of the court for the debt and costs.

Index

(3) The clerk shall index the entries in a book, alphabetically under the names of the debtors.

Copy of
entry as
evidence

(4) Where the original papers are lost or destroyed, a copy of the entry is evidence of the matters therein set forth. R.S.O. 1960, c. 78, s. 15.

Small claims
court
judgment
creditors

16. A creditor who has recovered a judgment in a small claims court against the debtor may deliver to the sheriff a certificate, under the hand of the clerk and the seal of the small claims court, of the amount of his judgment and of the costs to which he is

entitled, and the certificate so delivered shall have the same effect, for the purposes of this Act, as if the creditor had delivered to the sheriff an execution from a county court. R.S.O. 1960, c. 78, s. 16, *amended*.

17. Where a creditor has taken in one county the prescribed proceedings in respect of his claim and desires to establish his claim for the purposes of this Act in another county, he may do so by obtaining from the clerk of the county court of the county first mentioned another certificate in Form 5, and delivering it to the sheriff of such other county, and the delivery of the certificate to the sheriff has the same effect in such other county from the time of the delivery thereof as if the certificate had been issued by the clerk of the county court of such other county upon the proceedings therein. R.S.O. 1960, c. 78, s. 17.

Establishing
claim in
another
county

18. A creditor entitled to obtain a certificate from the clerk of a county court may also sue out an execution into any county in the same manner as on an ordinary judgment; but this does not prejudice the right of any other creditor to contest the claim of the first-mentioned creditor under this Act. R.S.O. 1960, c. 78, s. 18.

Executions
may issue to
any county

19.—(1) Where a claim is contested in one county, the decision thereon shall, as between the parties to the contestation, determine the amount of the claim for the purposes of this Act and in all other counties in which the claim is filed, and the certificate of the clerk of the county court of the county in which the contestation has taken place as to the result thereof is sufficient evidence of the decision.

Effect of
decision
after
contestation

(2) Upon payment of a fee of 50 cents the certificate shall be granted to any party to the proceedings who applies therefor. R.S.O. 1960, c. 78, s. 19.

Fee for
certificate
of result

20.—(1) Where the debtor, without a sale by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, and no other claim has been filed, or where all executions and certificates in the sheriff's hands are withdrawn and any claims filed are paid or withdrawn, notice shall not be entered under section 5 and no further proceedings shall be taken under section 6.

Effect of
payment or
withdrawal
of all
executions
and
certificates

(2) Save as aforesaid, after a certificate has been delivered to the sheriff, the withdrawal or expiry of the execution upon which the proceedings are founded, or any stay of the same, or the satisfaction of the plaintiff's claim thereon, or the setting aside or return of the execution, does not affect the proceedings that may be taken under this Act, and, except so far as the action taken with respect to the execution may affect the amount to be levied, the sheriff shall levy upon the property of the debtor as he would

Where all
not satisfied

have done had the execution remained in his hands in full force for execution, and he may also take the like proceedings as he would have been entitled to take had the execution been a writ of *venditioni exponas*.

Effect of
part pay-
ment where
one debt

(3) Where a debtor, without a sale by the sheriff, pays to him part of the amount owing in respect of an execution or certificate in his hands, and there is at the time no other execution or certificate in his hands, the sheriff shall apply the money so paid on the execution or certificate, and section 5 does not apply to the money so paid. R.S.O. 1960, c. 78, s. 20.

Priority of
costs under
R.S.O. 1970,
c. 2

21.—(1) Where proceedings have been taken against a debtor under *The Absconding Debtors Act* and his property has been attached under an order of attachment before an execution has been placed in the hands of the sheriff and the money levied is the proceeds of such property or a part thereof, the cost of the order of attachment, or, if there are more than one, the one first placed in the sheriff's hands and the proceedings thereon have priority over the claim of all other creditors.

Attaching
creditor and
execution
creditor

(2) Where an attaching creditor is entitled to priority under subsection 1, the priority provided for by subsection 2 of section 5 shall not be given to the execution creditor. R.S.O. 1960, c. 78, s. 21.

Costs of
claimant

22.—(1) The clerk of the county court shall ascertain and state in his certificate the amount of the costs to which the claimant is entitled as against the debtor.

Scale of
costs

(2) Such costs shall be the following:

1. For serving the affidavit of claim and notice, in the case of claims over \$400, on the scale of the Supreme Court, and in the case of claims exceeding \$200 and not exceeding \$400, on the county court scale, and in the case of claims of \$200 and under, on the small claims court scale; but, if the claim does not exceed \$200, no greater fees are to be allowed than would be allowed to a small claims court bailiff for the service of a small claims court summons and mileage if the claim had been sued in the proper small claims court.
2. The fees paid to the clerk of the county court, on the scale for like proceedings in the county court, unless the claim does not exceed \$200, in which case his fees are those allowable for like proceedings in the small claims court.
3. Where there is no contest, \$5 for fees of a solicitor, if one is employed, unless the amount of the claim does not exceed \$200, in which case the sum of \$2 shall be allowed.

4. Where there is a contest, such additional costs as the judge may allow, to be taxed on the scale of the Supreme Court, county court, or small claims court, according as the amount in dispute is within the jurisdiction of one or other of such courts.
5. The costs of obtaining an order for substitutional service or other similar order and of such service, and of or incidental to service out of Ontario, if the claim is within the jurisdiction of the small claims court, only such costs as would have been allowed in the small claims court. R.S.O. 1960, c. 78, s. 22, *amended*.

23. Where there is in a court a fund belonging to an execution debtor or to which he is entitled, it or a sufficient part thereof to meet the executions and certificates in the sheriff's hands may, on the application of the sheriff or any person interested, be paid over to the sheriff, and it shall be deemed to be money levied under execution within the meaning of this Act. R.S.O. 1960, c. 78, s. 23.

Payment to
sheriff of
fund in
court

24. Where a judgment creditor obtains the appointment of a receiver by way of equitable execution of property of his debtor, the receiver shall pay into court the money received by him by virtue of his receivership, and it is subject to section 23, but the creditor is entitled to be paid thereout the costs of and incidental to the receivership order and the proceedings thereon in priority to the claims of all other creditors. R.S.O. 1960, c. 78, s. 24.

Money
made by
receiver

25.—(1) If the sheriff does not find property of a debtor leviable under the executions and certificates in his hands sufficient to pay the same in full, but finds property or the proceeds thereof in the hands of the bailiff of a small claims court under an execution or attachment against the debtor, the sheriff shall demand and obtain them from the bailiff, who shall forthwith deliver them to the sheriff with a copy of every execution and attachment in his hands against the debtor and a memorandum showing the amount to be levied under the execution, including the bailiff's fees, and the date upon which each execution or attachment was received by him.

Goods in
hands of
small claims
court
bailiff

(2) If the bailiff fails to deliver any of such property or the proceeds thereof, he shall pay double the value of that which is retained, which may be recovered by the sheriff from him with costs of suit, and shall be accounted for by the sheriff as part of the estate of the debtor.

Penalty for
default

(3) The costs and disbursements of the bailiff are a first charge upon such property or the proceeds thereof and shall be paid by

Costs

the sheriff to the bailiff upon demand after being taxed by the small claims court clerk.

Distribution
of proceeds

(4) The sheriff shall distribute the proceeds among the creditors entitled to share in the distribution, and the small claims court execution creditors are entitled without further proof to stand in the same position as creditors whose executions are in the sheriff's hands. R.S.O. 1960, c. 78, s. 25, *amended*.

Apportion-
ment

26. Where the amount levied by the sheriff is not sufficient to pay the executions and certificates with costs in full, the money shall be applied to the payment rateably of such debts and costs of the creditors, after retaining the sheriff's fees including poundage, and after payment in full of the taxed costs and the costs of the execution to the creditor at whose instance and under whose execution the seizure and levy were made where he is entitled to priority therefor under this Act. R.S.O. 1960, c. 78, s. 26.

Levy of
interest and
costs of
renewals

27. The sheriff, if directed by an endorsement upon a certificate, shall, in addition to the amounts named therein, levy interest on such amounts from the date of the certificate, or from the date named in that behalf in the certificate, and also \$1.35 for the disbursements on every renewal of the certificate, and, where such renewal is made upon the application of a solicitor, he shall also levy \$1.25 for the solicitor's costs on the renewal. R.S.O. 1960, c. 78, s. 27.

Sheriff's
poundage

28. Where money is to be distributed by the sheriff under this Act, he is not entitled to poundage as upon separate executions or certificates, but only upon the net proceeds distributable by him at the same rate as if the whole amount had been payable upon one execution. R.S.O. 1960, c. 78, s. 28.

Application
of money
made under
execution

29.—(1) Where money is made under an execution, it shall be taken to have been made under all the executions and certificates entitled to the benefit thereof, and, upon payment being made to the person entitled under any such execution or certificate, the sheriff shall endorse thereon a memorandum of the amount so paid, but he shall not, except on the request of the party who issued the execution, or by direction of the court out of which the same issued, or of a judge thereof, return the execution until it has been fully satisfied or has expired, in which latter case the sheriff shall make a formal return of the amount made thereunder.

Compelling
payment
by sheriff

(2) The like proceedings may be taken to compel payment by the sheriff of money payable in respect to a certificate as can now be had to compel the return by the sheriff of an execution. R.S.O. 1960, c. 78, s. 29.

30. Pending the distribution, the sheriff shall keep, in the book mentioned in section 5, a statement in Form 6 showing,

Statement to be kept in sheriff's office, pending distribution

- (a) the amounts levied or received and the dates of levy or receipt;
- (b) each execution, certificate or order in his hands at the time of making the entry in Form 1, or subsequently received during the month, the amount thereof, for debt and costs, and the date of receipt, and such statement shall be amended from time to time as additional amounts are levied or received or further executions, certificates or orders are received. R.S.O. 1960, c. 78, s. 30.

31. The sheriff shall at all times without fee answer any reasonable question that he is asked orally respecting the property of the debtor by a creditor or any one acting on the creditor's behalf, and shall facilitate the obtaining by him of full information respecting the property and the probable dividend to be realized therefrom in his county, or any other information in connection with the property that the creditor may reasonably desire to obtain. R.S.O. 1960, c. 78, s. 31.

Sheriff to give information as to estate of debtor

32.—(1) Where at the time for distribution the money is insufficient to pay all claims in full, the sheriff shall first prepare for examination by the debtor and his creditors a list of the creditors entitled to share in the distribution, with the amount due to each for principal, interest and costs.

Distribution by sheriff where amount levied insufficient to meet all claims

(2) The list shall be so arranged as to show the amount payable to each creditor and the total amount to be distributed, and the sheriff shall deliver or send by registered mail a copy of the list to each creditor or his solicitor.

Contents of list

(3) If within eight days after all the copies have been delivered or posted, or within such further time as the judge may allow, no objection is made as provided by this Act, the sheriff shall make distribution forthwith pursuant to such list.

Time for distribution

(4) If objection is made, the sheriff shall forthwith distribute rateably so much of the money made, and among such persons, as will not interfere with the effect of the objection in case it should be allowed.

Where objection made

(5) Any person affected by the proposed scheme of distribution may contest it by giving, within the time mentioned in subsection 3, a notice in writing to the sheriff stating his objection to the scheme and the grounds thereof.

Right of contestation

(6) The contestant shall within eight days thereafter apply to the judge for an order adjudicating upon the matter in dispute, otherwise the contestation shall be taken to be abandoned.

Order

Appoint-
ment

(7) The contestant shall, within the time mentioned in subsection 6, obtain from the judge an appointment for hearing and determining the matter in dispute.

Service

(8) A copy of the appointment and a notice in writing in Form 7 of the objections stating the grounds thereof shall be served by the contestant upon the debtor, unless he is the contestant, and upon the creditors or such of them as the judge may direct.

Determina-
tion of
dispute

(9) The judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any court and in any county for the determination thereof, and may make such order as to the costs of the proceedings as he considers just, and subsections 2 and 3 of section 13 apply.

Distribution
of money
retained

(10) Where a claimant is held to be not entitled or to be entitled to part only of his claim, the money retained pending the contestation or the portion as to which the claimant has failed shall be distributed among the creditors who would have been entitled to it as it would have been distributed had the claim in respect thereof not been made.

Rights of
subsequent
execution
creditors
where first
execution
followed by
a mortgage

(11) Where a debtor has executed a mortgage or other charge, otherwise valid, upon his property or a part thereof after the receipt of an execution by the sheriff and before distribution, such mortgage or charge shall not prevent the sheriff from selling the property under an execution or certificate placed in his hands before distribution as if such mortgage or charge had not been given, nor prevent creditors whose executions or certificates are subsequent thereto from sharing in the distribution; but, in distributing the money realized from the sale of such property, the sheriff shall deduct and pay to the person entitled thereto the amount of such mortgage or charge from the amount that would otherwise be payable out of the proceeds of such property to such subsequent creditors.

Scheme of
distribution
in above
case

(12) In the case provided for in subsection 11, the sheriff shall prepare a separate scheme of distribution of the proceeds of the encumbered property without reference to the mortgage or charge, and from the dividends payable according to such scheme to subsequent creditors there shall be deducted the amount of the mortgage or charge, and the amount so deducted shall be paid to the encumbrancer. R.S.O. 1960, c. 78, s. 32.

Directions
by judge to
avoid un-
necessary
parties
and trials

33. Where several creditors are interested in a contestation, either for or against the same, the judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as he considers just, and shall direct by whom and in what proportions any cost incurred in the contestation, or in any proceedings thereunder, shall be paid, and whether any and what costs shall be paid out of the money levied. R.S.O. 1960, c. 78, s. 33.

34.—(1) The judge may direct the sheriff to levy for an amount sufficient to cover a claim that is in dispute, or part thereof, or, if it appears to the judge that it is improbable that the debtor has other sufficient property, he may direct the sheriff to retain in his hands during the contestation the share that, if the claim is sustained, will be apportionable to it, or a part thereof.

Direction by judge to sheriff where claim is disputed

(2) An order to levy under this section confers on the sheriff the same authority as he would have under an execution. R.S.O. 1960, c. 78, s. 34.

Authority of sheriff under order

35. The decision of a judge of the county court or of the Court of Appeal on an appeal binds the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion. R.S.O. 1960, c. 78, s. 35.

Effect of decisions

36.—(1) Where money comes into the hands of a sheriff, he shall, whenever it amounts to \$100, deposit it in a chartered bank designated for that purpose by the Lieutenant Governor in Council, or, where there is no such bank, in a chartered bank in which public money of Ontario is then being deposited.

Deposit of money in bank

(2) The deposit shall be made in a special account in the name of the sheriff as "Trustee for the creditors of (the debtor)". R.S.O. 1960, c. 78, s. 36.

Special account

37. Where there are in the sheriff's hands several executions and certificates and there does not appear to be sufficient property to pay all and his own fees, he may apply for an order attaching any debt owing to the execution debtor by any person resident in the county of the sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in the county, and to procure an order and to obtain and enforce payment of the debt the sheriff may take the same proceedings as a creditor, and in such case an execution may be directed to him in the same manner as if the attachment were by a creditor, and the proceeds of the debt attached shall be dealt with and distributed in the same manner as if he had realized the proceeds under execution. R.S.O. 1960, c. 78, s. 37.

Attaching orders by sheriff

38. If a party to a contestation or matter upon which a judge has rendered or made a final judgment or order is dissatisfied with the judgment or order and it is in respect to a question involving a sum greater than \$100, he may appeal therefrom to the Court of Appeal as nearly as may be according to the practice in force in respect of appeals from a county court or a judge thereof. R.S.O. 1960, c. 78, s. 38.

Appeal

39. For the purpose of giving effect to this Act and carrying out its provisions, a judge has all the powers that a county court or a judge thereof has by law for other purposes, and any proceed-

Powers of judge

ings erroneously taken under this Act may be set aside by the judge, with or without costs as he thinks fit. R.S.O. 1960, c. 78, s. 39.

Evidence on
proceeding
before judge

40. Upon any proceeding before the judge, the evidence may be taken orally or by affidavit as the judge may direct. R.S.O. 1960, c. 78, s. 40.

Fees
payable to
the Crown

41. In addition to the fees authorized to be paid to the clerk of the county court for his own use, the following fees are payable to the Crown upon all claims filed, where the amount of the claim exceeds \$200:

On an affidavit of claim where the amount claimed does not exceed \$400.....	\$.80
On every such affidavit where the claim exceeds \$400.....	1.50
On every certificate of the clerk given under section 9, where the claim does not exceed \$400.....	.80
On every such certificate where the claim exceeds \$400.....	1.50
On every order made by the judge allowing or disallowing a claim, where the claim does not exceed \$400.....	.50
On every such order where the claim exceeds \$400.....	1.00

R.S.O. 1960, c. 78, s. 41.

Application
of R.S.O.
1970, c. 228,
and rules
of court

42. Except where inconsistent with this Act, *The Judicature Act* and the rules of court apply to proceedings under this Act. R.S.O. 1960, c. 78, s. 42.

FORM 1

The Creditors' Relief Act

(Section 5 (1); Section 30 (b))

SHERIFF'S ENTRY

I have on this day in my hands for distribution under *The Creditors' Relief Act* among the creditors of *C.D.* the sum of \$....., and the distribution will be made among the creditors of *C.D.* entitled to share therein at the expiration of one month from this day.

Dated the..... day of....., 19.....

F.G.

Sheriff

R.S.O. 1960, c. 78, Form 1.

FORM 2

The Creditors' Relief Act

(Section 7 (1))

AFFIDAVIT OF CLAIM

In the County Court of the County of

A. B., Claimant

and

C. D., Debtor

I, A. B., of, in the County of,
Merchant (*or as the case may be*), make oath and say:

1. I am the above-named claimant (*or* the duly authorized agent of the claimant) in this behalf, and have a personal knowledge of the matter hereinafter deposed to.

2. The above-named debtor is justly and truly indebted to me (*or* to the above-named claimant) in the sum of \$....., for
[*here state shortly the nature and particulars of the claim*].

Sworn, etc.

A. B.

R.S.O. 1960, c. 78, Form 2.

FORM 3

The Creditors' Relief Act

(Section 7 (3); Section 8 (3, 4))

NOTICE TO BE SERVED WITH CLAIM

In the County Court of the County of

A. B., Claimant

and

C. D., Debtor

To the above-named debtor.

Take notice that the claimant intends to file with the clerk of the County Court of the County of (or as the case may be) the original affidavit of claim of which a duplicate is served herewith, and that this proceeding is taken by reason of there being in the hands of the sheriff of the said county an execution against your property, and that the claimant intends to call on the sheriff to levy the amount of the said debt from your property under the authority of *The Creditors' Relief Act*.

And further take notice that, if you desire to contest the said claim or any part thereof, you must, within ten (10) days* after the service of this notice upon you, file with the clerk of the said Court an affidavit stating that you have a good defence to the said claim on the merits, or that you have such defence to a specified part of the claim. If no such affidavit is filed, the claim will be treated as admitted by you. If the affidavit is filed contesting the claim as to part only, such claim may be so treated as to the part not contested.

And further take notice that, unless you endorse upon such affidavit filed by you a statement of some place in, or within three miles of the county town of the said county at which service may be made upon you, or the address of some solicitor in Ontario who may be served on your behalf, service may be made upon you of any notice, paper or document by sending it by registered mail addressed to you at the said county town.

Dated the day of, 19.

A. B.
Claimant

*NOTE.—If further time is given by a judge, the notice should be varied accordingly.

R.S.O. 1960, c. 78, Form 3.

FORM 4

The Creditors' Relief Act

(Section 8 (5))

AFFIDAVIT OF SERVICE OF CLAIM

In the County Court of the County of

A. B., Claimant
and*C. D.*, DebtorI, *G. H.*, of, in the County of, make
oath and say:

1. That I did, on the day of, 19, personally serve *C. D.*, the above-named debtor (*or as the case may be*) with an original affidavit, identical with the annexed affidavit, and that there was, at the time of such service, attached to (*or endorsed upon*) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (*or endorsed upon*) the said annexed affidavit.

Sworn, etc.

G. H.

R.S.O. 1960, c. 78, Form 4.

FORM 5

The Creditors' Relief Act

(Section 9 (1); Section 17)

CERTIFICATE OF PROOF OF CLAIM

In the County Court of the County of.....

A. B., Claimant
and

C. D., Debtor

I,, Clerk of the County Court of the
County of....., do hereby certify:

1. That the above-named claimant did on the..... day
of....., 19....., file with me a claim against the
above-named debtor, for the sum of.....
together with an affidavit of personal service thereof (*or as the case requires*) and of
the notice required by *The Creditors' Relief Act*, upon the said debtor, and that it
thereby appears that such service was made on the..... day
of....., 19.....

2. That the debtor has not contested the said claim (*or, has only contested*
the sum of..... part of the said claim (*as the case*
may be), and that the claimant having abandoned such part is entitled to the
residue of his claim, being the sum of..... and the further
sum of..... for costs)

(Or when the claim is contested in whole or in part, 1.

That the claim has been allowed by the judge at the sum of \$.....,
with \$..... for costs.)

G. H.

Clerk

R.S.O. 1960, c. 78, Form 5.

FORM 6

*The Creditors' Relief Act**(Section 30)*SHERIFF'S STATEMENT OF EXECUTIONS, ETC., IN HIS HANDS AGAINST
C. D.

CAUSE	Proceedings	Claim without Costs	Costs	Date of Receipt by Sheriff	Amount Levied or Received	Date of Levy or Receipt
		\$	\$		\$	
A. B. v C. D. . . .	<i>Fi. fa.</i> goods and lands	504	30	18th Feb., 19 .	500	1st May, 19 .
F. G. v C. D. & E. G.	<i>Fi. fa.</i> goods and lands	400	20	1st March, 19 .	300	3rd May, 19 . Nothing made against E.G. 9th May, 19 .
K. L. v C. D. . . .	garnishment order	500	30		300	
M. N. v C. D. . .	Creditor's Certificate	400	5	15th May, 19 .		

R.S.O. 1960, c. 78, Form 6.

FORM 7

The Creditors' Relief Act

(Section 32 (8))

NOTICE OF CONTESTATION OF SCHEME OF DISTRIBUTION

In the County Court of the County of.

A. B., Claimant

and

C. D., Debtor

To C. D., debtor, and F. G. and M. N., claimants.

Take notice that I contest the scheme of distribution prepared by the Sheriff of the County of. in respect of the claims of you, the said F. G. and M. N., on the following ground (*state distinctly the ground*), and a copy of the judge's appointment to adjudicate upon the matter is served herewith.

Dated the. day of., 19.

X. Y.
Contestant

R.S.O. 1960, c. 78, Form 7.